

FILED BY Bonni D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE 05 JUL 22 PM 6:09
WESTERN DIVISION

JEH, INC., and ERIC HINSHAW

 THOMAS M. GOULD
 CLERK, U.S. DISTRICT COURT
 WD OF TN, MEMPHIS

Plaintiffs,

v.

No. 05-2509 Ma/V

 VOLVO CONSTRUCTION EQUIPMENT)
 RENTS, INC., VOLVO CONSTRUCTION)
 EQUIPMENT NORTH AMERICA, INC.,)
 VOLVO COMMERCIAL FINANCE LLC)
 THE AMERICAS, and SCOTT)
 CONSTRUCTION EQUIPMENT CO., LLC,))

Defendants.

**ORDER CONTINUING STATE COURT'S TEMPORARY RESTRAINING ORDER AND
SETTING PRELIMINARY INJUNCTION HEARING**

This action arises from the alleged breach of a franchise agreement between Plaintiffs and Defendant Volvo Construction Equipment Rents, Inc. ("Volvo Rents"). On July 1, 2005, Plaintiffs filed suit for rescission, damages, and declaratory judgment in Chancery Court of Shelby County, Tennessee. On July 5, 2005, Defendant Volvo Commercial Finance LLC The Americas ("Volvo Finance") issued Plaintiffs a notice of default on debt that Plaintiffs had incurred under the franchise agreement. Plaintiffs contend that they have not defaulted on any of their obligations under the agreement.

The Plaintiffs claimed that this notice was in retaliation for their filing suit and requested a temporary restraining order

against the Defendants. On July 6, 2005, Judge James Russell granted Plaintiffs' request:

In the meantime, you are prohibited and restrained from taking any action with regard to default or any other action changing the status quo of the relationship between the Plaintiffs JEH, Inc. and Eric Henshaw and Volvo Construction Equip Rents, Inc., Volvo Commercial Finance or any other entity owned by Volvo Construction North America, Inc., until further Orders of this Court to the contrary.

On July 15, 2005, the Defendants removed the case to United States District Court. On July 20, 2005, Plaintiffs moved that the restraining order granted in state court be extended by this court. Defendant Volvo Finance responded on July 22, 2005. Federal law provides that "[a]ll injunctions, orders, and other proceedings had in such action [removed from state court to federal court] prior to its removal shall remain in full force and effect until dissolved or modified by the district court." 28 U.S.C. § 1450. Plaintiffs indicate that they will seek a preliminary injunction from this court, and the court is not prepared to modify the standing order until it hears the parties' arguments addressed to that request.

For the foregoing reasons, the court GRANTS the request to continue the July 6, 2005 temporary restraining order until the request for a preliminary injunction is resolved. The court will hold a hearing on that matter on Wednesday, July 27, 10:30 a.m., in 11th Floor Courtroom 2, Clifford Davis Federal Building, 167 North Main Street, Memphis, Tennessee 38103.

So ORDERED this 22d day of July 2005.



SAMUEL H. MAYS, JR
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 19 in case 2:05-CV-02509 was distributed by fax, mail, or direct printing on July 26, 2005 to the parties listed.

Kenny W. Armstrong
CHANCERY COURT, 30TH JUDICIAL DISTRICT
140 Adams Ave.
Rm. 308
Memphis, TN 38103

C. Barry Ward
GLANKLER BROWN, PLLC
One Commerce Square
Suite 1700
Memphis, TN 38103

Glen G. Reid
WYATT TARRANT & COMBS
P.O. Box 775000
Memphis, TN 38177--500

Eugene J. Podesta
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ
165 Madison Ave.
Ste. 2000
Memphis, TN 38103

Stephen P. Hale
HUSCH & EPPENBERGER
200 Jefferson Ave.
Ste. 1450
Memphis, TN 38103

Amy E. Ferguson
GLANKLER BROWN, PLLC
One Commerce Square
Suite 1700
Memphis, TN 38103

Robert E. Craddock
WYATT TARRANT & COMBS
P.O. Box 775000
Memphis, TN 38177--500

Thomas F. Barnett
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ
165 Madison Ave.
Ste. 2000
Memphis, TN 38103

Honorable Samuel Mays
US DISTRICT COURT